Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 85-349

In The
Supreme Court of the United States
October Term, 1985

DONALD TOMCZAK,

Petitioner,

v.

CITY OF CHICAGO,

Respondent.

REPLY BRIEF OF THE PETITIONER IN RESPONSE TO THE BRIEF IN OPPOSITION OF THE RESPONDENT

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REPLY BRIEF

Pursuant to Rule 22.5 the Petitioner files a Reply Brief Because the Respondent's Sole Argument in its BRIEF IN OPPOSITION Relies Entirely Upon Arguments Not Raised in the Petition for Certiorari and First Raised in the Respondent's Brief in Opposition

Rule 22.5 of the United States Supreme Court Rules allows for the filing of a Reply to a Brief in Opposition to a Petition for Certiorari when that Brief in Opposition raises arguments not addressed originally by the Petition for Certiorari.

In its Brief in Opposition, Respondent argues that the Trial Court was reversed because it erred by considering what the Petitioner personally did and not what the responsibilities of his position were. (Page 6)

Not only does the Petition for Certiorari not present this issue, but this is a gross misstatement of the Seventh Circuit Opinion. The United States Court of Appeals never accused the Trial Court of employing improper standards in reaching its decision. In fact, the Seventh Circuit pointed out that the Trial Court found it was "the Plaintiff's position" that was protected against patronage dismissal. The Seventh Circuit was of the opinion that reversal was mandated because the facts did not support this decision of the Trial Court.

> "The District Court found that Plaintiff's only area of decisionmaking authority, while broad within the area, related solely to the mundane decisions concerning the repair and rehabilitation of the water systems and that he had no decisionmaking authority in areas in which there could be principled disagreements about

> goals or their implementation. *Consequently, the Court found Plaintiff's position protected against a patronage* dismissal. *After a thorough review of the record, we are left with the firm conviction that the District Court was clearly erroneous in so finding.*" (emphasis added) App. 17*

The Trial Court itself specifically stated (App. 25) that the test employed in reaching its decision was, " 'whether the position held by the individual authorizes, either directly or indirectly, meaningful input into governmental decisionmaking or issues where there is room for principled disagreement on goals or their implementation.' " (Citing *Nekolny v. Painter*, 653 F 2d 1164 (7th Cir., 1981)

The Respondent's argument is a weak attempt to divert the Court's attention from the real issue which is that the standard employed by the Appellate Court in reversing the Trial Court was erroneous in light of *Anderson v. Bessemer City*, — US —, 84 L. Ed. 2d 518 (1985) since the Appellate Court Opinion itself evidences that the Trial Court was faced with two plausible views of the evidence and hence its decision could not be clearly erroneous.

Respectfully submitted,

PATRICK T. MURPHY

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*"App." refers to the Appendix in the Petition for a Writ of Certiorari.